

Inspector General

United States
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Air Force Use of Time-and-Materials Contracts in
Southwest Asia

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Acronyms and Abbreviations

4PAE03	Worldwide Planning, Program, and Design Contracts – 2003
4PAE08	Worldwide Planning, Program, and Design Contracts – 2008
AE	Architect-Engineering
AFCEE	Air Force Center for Engineering and the Environment
COR	Contracting Officer's Representative
D&F	Determination and Findings
DFARS	Defense Federal Acquisition Regulation Supplement
FAR	Federal Acquisition Regulation
IDIQ	Indefinite-Delivery, Indefinite-Quantity
IG	Inspector General
PNM	Price Negotiation Memorandum
QASP	Quality Assurance Surveillance Plan
SOW	Statement of Work
T&M	Time-and-Materials
U.S.C.	United States Code



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

August 16, 2010

MEMORANDUM FOR ASSISTANT SECRETARY OF THE AIR FORCE
(FINANCIAL MANAGEMENT AND COMPTROLLER)
DIRECTOR, AIR FORCE CENTER FOR ENGINEERING
AND THE ENVIRONMENT

SUBJECT: Air Force Use of Time-and-Materials Contracts in Southwest Asia
(Report No. D-2010-078)

We are providing this report for review and comment. We considered comments from the Deputy Director, Air Force Center for Engineering and the Environment, when preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The Deputy Director, Air Force Center for Engineering and the Environment, comments were partially responsive. Therefore, we request additional comments on Recommendations A.1 and A.2 by September 16, 2010. As a result of management comments on the draft, we deleted Finding B and Recommendation B and renamed Finding C and Recommendation C to Finding B and Recommendation B.

If possible, send management comments in electronic format (Adobe Acrobat file only) to audacm@dodig.mil. Copies of management comments must have the actual signature of the authorizing official for your organization. We cannot accept the / Signed / symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9201 (DSN 664-9201).

Richard B. Jolliffe
Assistant Inspector General
Acquisition and Contract Management



Results in Brief: Air Force Use of Time-and-Materials Contracts in Southwest Asia

What We Did

We determined whether DOD officials awarded and administered 6 time-and-materials contracts valued at \$120.8 million for work in Southwest Asia in accordance with the Federal Acquisition Regulation (FAR).

What We Found

Officials at the Air Force Center for Engineering and the Environment (AFCEE):

- Did not adequately monitor the title II contractors working in Southwest Asia and did not adequately review invoices because the title II contracting officer's representatives did not conduct site visits to Southwest Asia and, according to the contracting officer, there were not enough personnel to review invoices. As a result, AFCEE has no assurance that the contractors were working efficiently and effectively and AFCEE paid for \$24.3 million in labor costs that were not part of the contract.
- Did not fully support award decisions for the task orders because officials did not comply with the FAR. As a result, officials put AFCEE at risk for overcharges and labor inefficiencies by the contractor and could not be sure that the labor prices were fair and reasonable.

What We Recommend

The Director, AFCEE:

- direct officials to conduct appropriate surveillance of contractors;
- develop a written plan for reviewing invoices and request that the Defense Contract Audit Agency analyze contractor invoices and their supporting documentation to determine whether the

invoices include only allowable, reasonable, and allocable costs; and

- hold officials accountable by developing internal controls for adequately documenting and describing their decisions during the award process.

Management Comments and Our Response

The Deputy Director, AFCEE, did not agree with some parts of the findings and some of the recommendations.

Specifically, the Deputy Director did not agree that:

- AFCEE did not conduct adequate oversight of title II contractors. The Deputy Director agreed to ensure that AFCEE appointed appropriate contracting officer's representatives for the title II contractors in the future. However, we do not believe this will result in improved contractor performance.
- preparing quality assurance surveillance plans was a requirement for architect-engineering contracts. However, we assert that FAR 46.4, "Government Contract Quality Assurance," is applicable.

In addition, the AFCEE comments are not responsive for Recommendations A.1 and A.2. We request the Air Force reconsider its position on the recommendations and provide comments in response to the final report. The AFCEE comments on Recommendations A.3 and B are responsive. Please see the recommendations table on the back of this page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Director, Air Force Center for Engineering and the Environment	A.1 and A.2.	A.3 and B.

Please provide comments by September 16, 2010.

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Introduction

Objectives

Our overall audit objective was to determine whether DOD awarded and administered time-and-materials (T&M) contracts for Southwest Asia in accordance with the Federal Acquisition Regulation (FAR). Specifically, we reviewed the Air Force's award procedures and contract oversight to determine compliance with the FAR and other DOD policies. See Appendix A for a discussion of the scope and methodology. See Appendix B for prior coverage related to the objectives.

We performed this audit pursuant to Public Law 110-181, "The National Defense Authorization Act for Fiscal Year 2008," section 842, "Investigation of Waste, Fraud, and Abuse in Wartime Contracts and Contracting Processes in Iraq and Afghanistan," January 28, 2008. Section 842 requires "thorough audits . . . to identify potential waste, fraud, and abuse in the performance of (1) Department of Defense contracts, subcontracts, and task and delivery orders for the logistical support of coalition forces in Iraq and Afghanistan; and (2) Federal agency contracts, subcontracts, and task and delivery orders for the performance of security and reconstruction functions in Iraq and Afghanistan." We reviewed six task orders that required contractors to perform work in Iraq and Afghanistan.

Background

This is our second report addressing T&M contracts for work performed in Southwest Asia. This report addresses whether the Air Force Center for Engineering and the Environment (AFCEE) correctly awarded and administered T&M contracts. AFCEE is a field operating agency of the Air Force Civil Engineer located at Brooks City-Base in San Antonio, Texas. Its mission is to provide integrated engineering and environmental management, execution, and technical services that optimize Air Force and Joint capabilities through sustainable installations.

Our first report addressed whether the Army's Communications Electronics Command Acquisition Center, Research Development and Engineering Command Acquisition Center, and White Sands Missile Range Army Contracting Activity correctly awarded and administered T&M contracts.

AFCEE's Architect-Engineering Contracts

AFCEE awarded two sets of contracts for architect-engineering (AE) services, titled "Worldwide Planning, Program, and Design." AFCEE awarded the first set of Worldwide Planning, Program, and Design contracts in 2003 (4PAE03) and the second set of contracts in 2008 (4PAE08). Upon award of the 4PAE08 contracts, the 4PAE03 contracts were no longer available for new task orders.

4PAE03 was a multiple-award vehicle that included 30 contracts structured as indefinite-delivery, indefinite-quantity (IDIQ) contracts. AFCEE could award firm-fixed-price, fixed-price-incentive, and T&M task orders to any of the vendors using 4PAE03. 4PAE03 offered title I, title II, and other AE services.

Generally, title I services are typical AE services, to include all aspects of design and efforts required to support and develop design work; title II services are quality assurance and oversight services, to include supervision and inspection; and other AE services are those related to AE that do not fall into either the title I or title II descriptions.

4PAE08 is a multiple-award vehicle that included 29 of the 30 contractors from the 4PAE03 vehicle. Only one contractor, Versar Inc., did not receive a contract for the 4PAE08 multiple-award. AFCEE could award firm-fixed-price and T&M task orders to any of the vendors using 4PAE08. 4PAE08 also offered title I, title II, and other AE services.

Review of Internal Controls

DOD Instruction 5010.40, “Manager’s Internal Control (MIC) Program Procedures,” January 4, 2006, requires DOD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses for AFCEE. AFCEE did not have the following internal controls for contract administration and management: procedures to conduct oversight of the title II contractors; procedures to properly review invoices; or procedures to ensure that task order files contained a detailed and documented analysis representing a complete history of the task order. Implementing Recommendations A.1, A.2, A.3, and B will improve these conditions. We will provide a copy of the report to the senior official responsible for internal controls.

Finding A. Contract Oversight

AFCEE contracting and program officials did not perform adequate contract oversight for work performed on the 6 task orders we reviewed valued at \$120.8 million. Specifically, for the six task orders reviewed, contracting and program officials:

- did not monitor the contractors hired to perform the oversight function for construction work in Iraq and Afghanistan for five task orders valued at \$110.2 million;
- did not adequately review invoices for five task orders valued at \$98.6 million; and
- did not prepare quality assurance surveillance plans (QASPs) for the six task orders.

These conditions occurred because the title II contracting officer's representatives (CORs) did not conduct site visits or monitor the title II contractors working in Iraq and Afghanistan. According to the contracting officer, there were not enough personnel to review the invoices initially.

As a result, the Air Force has no assurance that the contractors were working efficiently and effectively. For example, faulty construction work and other serious engineering and construction issues resulted in a fire at the Afghan National Army Barracks. In addition, the Air Force was charged for labor categories and rates that were not included in the base contract or in the task orders issued. Specifically, the contractor invoiced a total of \$24.3 million in labor costs that AFCEE officials had not agreed to.

Criteria

T&M contracts are risky to the Government because there is no incentive for contractors to control costs or labor efficiency. FAR 16.601, "Time-and-Materials Contracts," defines a T&M contract as a contract that:

. . . provides for acquiring supplies or services on the basis of—(1) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and (2) Materials at cost, including, if appropriate, material handling costs as part of material costs.

On a T&M contract or task order, the Government reimburses the contractor based on actual cost of materials and direct labor hours at specified, fixed hourly rates that include wages, indirect costs, and profit. This type of contract or task order does not encourage efficient contractor performance because the contractor gets reimbursed for all incurred costs plus profit. Therefore, appropriate Government oversight, also known as contract surveillance or quality assurance of contractor performance, is required to provide reasonable assurance that efficient methods and effective cost controls are used throughout the life of the contract or task order.

FAR 46.101, “Definitions,” defines Government contract quality assurance as “the various functions, including inspection, performed by the Government to determine whether a contractor has fulfilled the contract obligations pertaining to quality and quantity.” One way to ensure quality assurance is to develop a QASP. FAR 46.401, “General,” states that these plans should specify all work requiring surveillance and the method of surveillance. It also requires the Government to conduct quality assurance to ensure that the contractor is performing in accordance with the statement of work. Surveillance of contractor performance and cost is essential to protect the interests of the Government.

FAR 37.1, “Service Contracts – General,” prescribes the policies and procedures for the acquisition and management of services by contract. Specifically, FAR 37.102(f) states, “Agencies shall establish effective management practices. . .to prevent fraud, waste, and abuse in service contracting.” FAR 37.102 also states, “(g) Services are to be obtained in the most cost-effective manner, without barriers to competition. . .” and “(h) Agencies shall ensure that sufficiently trained and experienced officials are available within the agency to manage and oversee the contract administration function.”

Defense Federal Acquisition Regulation Supplement (DFARS) 201.602-2, “Responsibilities,” states that the COR:

- (i) Must be a Government employee, unless otherwise authorized in agency regulations;
- (ii) Must be qualified by training and experience commensurate with the responsibilities to be delegated in accordance with department/agency guidelines;
- (iii) May not be delegated responsibility to perform functions at a contractor's location that have been delegated under FAR 42.202(a) to a contract administration office;
- (iv) Has no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract; and
- (v) Must be designated in writing, and a copy furnished the contractor and the contract administration office—
 - (A) Specifying the extent of the COR's authority to act on behalf of the contracting officer;
 - (B) Identifying the limitations on the COR's authority;
 - (C) Specifying the period covered by the designation;
 - (D) Stating the authority is not redelegable; and
 - (E) Stating that the COR may be personally liable for unauthorized acts.

Contracting Officer's Representatives

A COR was designated in writing for each of the six task orders, as required by the DFARS. DFARS 201.602-2, states that contracting officers may designate qualified personnel as their authorized representatives to assist in the technical monitoring or administration of a contract. The COR letters outlined the duties, which included observing the contractor to ensure that they were complying with the task order requirements and to document safety violations. Although AFCEE designated CORs for the six task orders, for five of the title II task orders, the CORs did not monitor the performance of the contractors because the CORs were located in the U.S. and did not conduct site visits to Iraq and Afghanistan.

Contract Oversight for Title II Work

Role of the Title II Contractors

AFCEE also awarded task orders for construction efforts in Iraq and Afghanistan and assigned CORs to those construction task orders. As AFCEE awarded construction task orders, they also awarded task orders for title II services through its 4PAE03 and 4PAE08 contracts. The title II work performed for the 4PAE03 and 4PAE08 contracts was for quality assurance and oversight services, including supervision and inspection over construction projects. Therefore, the title II contractors' role was essentially to perform the quality assurance portion of contract surveillance of the construction contractors in Iraq and Afghanistan. Accordingly, the title II contractors reviewed the same construction projects monitored by the AFCEE construction CORs. Although this may have been a duplication of coverage, there were still problems with the work done by the title II and construction contractors.

AFCEE may have put the title II contractors in a position in which the contractors are performing an inherently governmental function. FAR 7.503, "Policy," lists functions generally not considered to be inherently governmental, but may approach being in the category of an inherently governmental function. Work may approach this category of services because of the nature of the function and the manner in which the contractor performs the contract. FAR 7.503 identifies, "Services that involve or relate to the evaluation of another contractor's performance" as a service that may approach an inherently governmental function. This is the type of work the title II contractors are performing. In addition, because there is no Government oversight of the contractors, the contractors may be performing an inherently governmental function. Accordingly, AFCEE officials should conduct a legal review to determine whether these services were inherently governmental.

Surveillance of the Title II Contractors

AFCEE title II CORs stated that they did not directly monitor the title II contractors' work, because the title II contractors were, in essence, surveillance officials. In addition, the title II CORs relied on the construction CORs to learn of any problems with the title II contractors in the field, because the construction CORs were located in Iraq and Afghanistan and conducted site visits.

FAR 37.1, "Service Contracts—General," prescribes policies and procedures for the acquisition and management of services by contract. Specifically, FAR 37.102(f) states, "Agencies shall establish effective management practices . . . to prevent fraud, waste, and abuse in service contracting." FAR 46.4, "Government Contract Quality Assurance," outlines the requirements for ensuring that the contractor is performing in accordance with the contract requirements. Specifically, 46.401, "General," states, "Quality assurance surveillance plans should be prepared in conjunction with the preparation of the statement of work. The plans should specify—(1) All work requiring surveillance; and (2) The method of surveillance."

In addition, FAR 16.601(b)(1), “Government surveillance,” states,

A time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.

Although the title II contractors were overseeing other AFCEE task orders (the construction projects), AFCEE still needed to monitor the title II contractors to ensure the contractors were providing the work in an effective and efficient manner. Because there was no on site government surveillance of the title II contractors, the Government had no assurance that the contractors were working efficiently or effectively.

The title II contractors prepared discrepancy and noncompliance notices for the construction efforts in Iraq and Afghanistan. For example, from January 10, 2005, through May 1, 2007, for task order 0055, the contractor identified 3,827 incidents of discrepancies and noncompliance. Of these 3,827 incidents, 105 incidents were classified as critical. These critical issues included the use of inferior concrete, structures not meeting design specifications, exposed electrical wiring, faulty electrical wiring, and other building safety and structural support issues. Additionally, several buildings were located in a low drainage area compared to the buildings surrounding them, which caused rain water to flow inside the buildings.

Although the title II contractors identified many quality deficiencies, other deficiencies went unreported. The most critical incident was in Afghanistan where multiple electrical fires occurred at the Kabul Military Training Center, which housed approximately 1,200 Afghan National Army soldiers. These fires occurred because the construction contractor did not comply with the National Electrical Code and the title II contractors did not report the construction contractor’s noncompliance. An audit conducted by AMEC using the First Afghanistan Construction Company revealed, “an alarming lack of quality control on behalf of the [title II] contractors.”

In addition, the title II COR provided us with reports that identified a possible cause for major construction issues being unreported. These reports discussed the intimidation issues that the title II contractors face. In Iraq and Afghanistan, construction and title II contractors reported many instances in which they were threatened or in danger.

We determined another possible cause for discrepancies and noncompliance occurring or going unreported—the people hired to perform the title II work may not have the requisite experience and knowledge to evaluate construction. The statements of work (SOWs) for the title II task orders state, “Primary technical services shall be performed by individuals who are credentialed members of architectural, science, construction, and engineering professions.” The SOW also states, “Title II professionals need not be licensed professional engineers but must have a demonstrated competence and ability through a combination of experience and education to adequately ensure quality construction standards are met.” However, we asked AFCEE contracting officials how

they ensured that the contractor hired qualified personnel and they stated that it was the contractor's responsibility to hire employees with the proper qualifications.

An additional possible cause for discrepancies and noncompliance occurring or going unreported that the audit team identified is that the title II contractors may simply not be showing up to the construction sites or may not be working effectively and efficiently once they arrive. Because AFCEE officials did not monitor the title II contractors for performance, AFCEE has no way of knowing how often the title II contractors worked, where they worked, or what they did.

Invoices

The CORs only sporadically reviewed invoices. Five of the six task orders reviewed were T&M. The remaining task order was primarily T&M (93.4 percent of the amount). The rest of the task order was structured as firm-fixed-price. As noted in FAR 16.601(b)(1), "Government surveillance,"

A time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.

Surveillance includes reviewing invoices. However, the invoices for four of the six task orders reviewed did not contain sufficient detail. Several of the invoices for these four task orders did not provide a detailed breakdown of direct labor. The invoices provided the total labor hours and rates for each labor category, but did not indicate how many individuals performed the work or provide a breakdown of hours by employee. Table 1 shows an excerpt from an invoice. The invoice did not identify the number of individuals performing the work for any of the labor categories in the invoice. For example, the first labor category, "Local National Construction Inspector," had 630 billable hours over the 27-day billing period. The invoice did not state how many "Local Nationals Construction Inspector[s]" worked. If only one person worked for this labor category, that person would have worked an average of 23.3 hours per day for 27 straight days. Without knowing exactly how many individuals worked, no one can determine whether the hours invoiced were reasonable.

Table 1. Direct Labor – Invoiced Amounts (Excerpt from an Invoice)

Labor Category	Current Hours	Rate	Current Amount
Local National Construction Inspector	630	\$7.05	\$4,441.50
Local National Junior Engineer	1,200	10.58	12,696.00
Third Country National Construction Inspector	1,216	38.35	46,633.60
Project Manager	663	136.75	90,665.25

Also, the invoices presented other direct costs as lump sum amounts with no breakdown to show what comprised the other direct costs. Table 2 shows an excerpt from a different invoice. The invoice did not include documentation showing the hours worked or invoices provided to the prime contractor for the subcontracted labor, which is a significant cost category that represents 68.8 percent of the total other direct costs.

Table 2. Other Direct Costs – Invoiced Amounts (Excerpt from an Invoice)

Cost Category	Amount
Travel	\$68,067.43
Other Direct Costs	238,053.60
Heavy Equipment	4,462.00
Consultants	166,799.78
Subcontractors	1,108,200.69
Inter-Company Transfers	25,912.08
Total Other Direct Costs	\$1,611,495.58

In addition, AFCEE contracting officials did not conduct adequate reviews of the invoices for task orders 0055, 0063, 0067, 0083, and 0104. AFCEE awarded task order 0104 the earliest, on April 3, 2006, and task order 0083 the latest, on March 12, 2008. Modification 5 of task order 0083 identified May 15, 2009, as the end of the task order's period of performance. Therefore, for a period of more than 3 years, AFCEE did not conduct adequate invoice reviews for these task orders because, according to the contracting officer, AFCEE did not have enough personnel to review the invoices.

However, AFCEE identified this lack of review as a deficiency and hired a team of contractors to review the invoices. The contractors did not review previously issued invoices, only new invoices. At the time of our site visit, the contractors were reviewing only some of the invoices for task order 0032, which AFCEE awarded on September 30, 2008. However, AFCEE expected to hire additional contractors so all invoices could be reviewed.

We reviewed the invoices to determine whether the labor categories and rates invoiced by the contractor matched the labor categories and rates in the contract and task order. Five of the six task orders reviewed had invoice discrepancies related to direct labor. In total, the contractor invoiced and DOD paid for \$24.3 million in labor that AFCEE contracting officials never agreed to in the basic task orders or modified task orders. There was an additional \$101,678 in direct labor, invoiced and paid on task order 0055 for labor categories that were not incorporated into the task order until after the billing period of the invoice ended. According to the contracting officer, AFCEE uses Wide-Area Workflow to pay its invoices for these task orders, which automatically paid the invoices when they were received.

Task Order 0055

We reviewed 14 vouchers. Of the 23 labor categories invoiced, 4 labor categories with labor charges totaling \$5.9 million were not part of the base contract, basic task order, or modified task order. In addition, the contractor invoiced a particular labor category for \$101,678. The period of performance for this invoice was November 28, 2006, through December 29, 2006. However, the labor category was not incorporated into the task order until modification 6, which was effective on February 2, 2007—after the invoice shows the work was performed.

Task Order 0063

We reviewed 18 vouchers. Of the 20 labor categories invoiced, 10 labor categories with labor charges totaling \$1.1 million were not part of the base contract, basic task order, or modified task order.

Task Order 0067

We reviewed 21 vouchers. Of the 17 labor categories invoiced, 5 labor categories with labor charges totaling \$15.8 million were not part of the base contract, basic task order, or modified task order. In addition, modification 6 extended the period of performance for this task order into FY 2009. However, the modification to extend the period of performance did not include new FY 2009 labor rates. Invoices 18 through 21 billed for work performed in FY 2009. These invoices had 10 labor categories with rates that were 3 percent higher than the rates invoiced in FY 2008. Although 3 percent is a typical escalation rate for labor rates, this escalation rate was not agreed to in any of the modifications that extended the period of performance into FY 2009. Therefore, the contractor charged the Government \$9,852 more than what was agreed to in the task order.

Task Order 0083

We reviewed 10 vouchers. Of the 22 labor categories invoiced, 12 labor categories with labor charges totaling \$998,825 were not part of the base contract, basic task order, or modified task order.

Task Order 0104

We reviewed 20 vouchers. Of the 24 labor categories invoiced, 14 labor categories with labor charges totaling \$444,365 were not part of the base contract, basic task order, or modified task order. In addition, the contractor invoiced 10 labor categories for \$30,863. The period of performance for this invoice was September 23, 2006, through October 27, 2006. However, the new labor rates for these 10 labor categories were not incorporated into the task order until modification 3, which was effective on November 7, 2006—after the invoice's period of performance.

Due to the billing discrepancies we identified, AFCEE should establish a written plan to review the invoices for these task orders and request that the Defense Contract Audit Agency conduct a review of AFCEE's T&M invoices to ensure that the contractor properly billed the Government for work performed.

Quality Assurance Surveillance Plans

Contracting officials did not prepare QASPs for the six task orders we reviewed. FAR Subpart 46.4, “Government Contract Quality Assurance,” outlines the requirements for ensuring the contractor is performing in accordance with the contract requirements. Specifically, 46.401, “General,” states, “Quality assurance surveillance plans should be prepared in conjunction with the preparation of the statement of work. The plans should specify—(1) All work requiring surveillance; and (2) The method of surveillance.” The lack of quality assurance surveillance plans occurred because contracting officials did not comply with the FAR. Furthermore, the QASP should be prepared in conjunction with the SOW and should specify all work requiring surveillance and the method of surveillance. Contracting officers did not meet the FAR requirements for preparing the QASP; however, because there was no Government oversight on-site, we cannot measure the effect of not having a QASP for these task orders.

Summary

T&M contracts are the riskiest type of contract for the Government. Because of this, the FAR requires appropriate surveillance to provide reasonable assurance that efficient methods and effective controls were used. In addition, the FAR requires a written QASP that specifies the extent and method of surveillance. AFCEE did none of this. AFCEE did not assign in-theater personnel to oversee the title II contractors, did not have enough personnel to review invoices, and did not meet the FAR requirements for providing a QASP. AFCEE did not know whether appropriate personnel were hired, nor did they have assurance that the contractor worked efficiently or effectively. Furthermore, they had no assurance the invoiced amounts were reasonable.

Management Comments on the Finding and Our Response

Department of the Air Force Comments

The Deputy Director, Air Force Center for Engineering and the Environment, partially agreed with this finding. The Deputy Director did not agree that Air Force personnel did not monitor the contractors hired to perform title II services. The Deputy Director stated that contracting officer’s representatives for the construction contracts performed oversight of the title II contractors. Although the contracting officer’s representatives for the construction contracts were not properly designated as the contracting officer’s representatives for the title II contractors, the Air Force is making this administrative change by designating the construction contracting officer’s representatives also as the title II contracting officer’s representatives.

The Deputy Director also disagreed that preparing quality assurance surveillance plans was a requirement for architect-engineering contracts.

The Deputy Director agreed that the Air Force had a weakness with its review of contractor invoices, but stated that the Air Force implemented a review process in

February 2007. The Deputy Director acknowledged that the Air Force Center for Engineering and the Environment failed to review invoices retroactively.

Our Response

We disagree that the contracting officer's representatives for construction contracts provided oversight of the title II contractors. Based on our discussion with a former contracting officer's representative for a construction contract in Iraq, the title II contractors acted as an extension of the oversight function performed by the contracting officer's representatives for the construction contract. There was no indication that the contracting officer's representatives for the construction projects were onsite to monitor the work done by the title II contractors.

We also disagree that a quality assurance surveillance plan was not required by the Federal Acquisition Regulation. FAR 36.101(b) states, "When a requirement in this part is inconsistent with a requirement in another part of this regulation, this Part 36 shall take precedence if the acquisition of construction or architect-engineer services is involved." However, FAR part 36 does not provide any oversight requirements with the exception of adding clauses to the contract. Therefore, the lack of surveillance requirements in FAR part 36 does not suspend the requirement of FAR 46.401, which requires quality assurance surveillance plans. Finally, FAR 16.601(b)(1), "Government surveillance," states,

A time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.

Recommendations, Management Comments, and Our Response

A. We recommend that the Director, Air Force Center for Engineering and the Environment:

- 1. Establish a written plan to review the invoices for time-and-materials task orders; request the Defense Contract Audit Agency's assistance in reviewing invoices for allowable, allocable, and reasonable costs; obtain reimbursements for incorrect charges; and report the amounts reimbursed on a periodic basis to the appropriate officials and the DOD Inspector General. The plan should require special attention to the \$24.3 million of charges for labor charges invoiced by the contractors but not authorized by the task orders.**

Department of the Air Force Comments

The Deputy Director, Air Force Center for Engineering and the Environment, disagreed. The Deputy Director stated that surveillance plans are prepared for each task order and

placed in each file. The Deputy Director stated that invoice review teams are in place to validate contractor invoices before payments are made to DFAS.

Our Response

The Air Force comments are nonresponsive. We did not address surveillance plans in this recommendation. Furthermore, the plans identified by the Air Force Center for Engineering and the Environment as surveillance plans did not address reviewing invoices. Also, the Deputy Director already stated in the comments on the finding that the contractor hired to review invoices did not retroactively review invoices; therefore, problems with earlier invoices were not identified. In addition, the \$24.3 million in improper labor charges should be recouped by the Government. The intent of the recommendation is for the Air Force to develop a written plan for recouping, as appropriate, the overpayments to the contractor. We request that the Air Force reconsider its position on the recommendation and provide comments on the final report.

2. Assign contracting officer's representatives or other Government officials to develop quality assurance surveillance plans and conduct and document appropriate surveillance over the title II contractors to ensure that work performed on a time-and-materials basis is being performed in accordance with the task order requirements and is invoiced correctly.

Department of the Air Force Comments

The Deputy Director, Air Force Center for Engineering and the Environment, disagreed. The Air Force recognizes that it did not properly designate construction contracting officer's representatives as the contracting officer's representatives for the title II contractors and that it is correcting this error.

Our Response

The Air Force comments are partially responsive. If the contracting officer believes the construction contracting officer's representatives can oversee title II contractors, then the contracting officer needs to document this in the contract files for the title II task orders. However, based on our discussion with a former contracting officer's representative for a construction contract in Iraq, title II contractors acted as an extension of the oversight function performed by the contracting officer's representatives for the construction contract. There was no indication that the contracting officer's representatives for the construction projects were actually onsite to monitor the work done by the title II contractors. Because we did not review the construction contract, we assume the construction contracting officer's representatives have the requisite training and experience to perform those duties. The Deputy Director's comments are nonresponsive with regard to developing quality assurance surveillance plans. The Deputy Director discussed the quality assurance surveillance plans in his comments on the finding, but not on this recommendation. We request that the Air Force reconsider its position on the recommendation and provide comments on the final report.

3. Conduct a legal review of the statements of work for the title II task orders to determine whether the work performed was an inherently governmental function.

Department of the Air Force Comments

The Deputy Director, Air Force Center for Engineering and the Environment, agreed and had the legal division review six statements of work. The legal division concluded that the contractor did not perform inherently governmental functions.

Our Response

The Air Force comments are fully responsive. No further comments are required.

Finding B. Task Order Documentation

We reviewed six task orders valued at \$120.8 million that AFCEE contracting officials awarded using the 4PAE03 and 4PAE08 multiple-award contracts. AFCEE contracting officials:

- did not prepare a justification for the use of a T&M task order for one task order valued at \$18.3 million;
- prepared an inadequate justification for the use of a T&M task order for one task order valued at \$24.0 million;
- did not prepare a source selection document for one task order valued at \$18.3 million;
- prepared inadequate source selection documents for three task orders valued at \$78.5 million;
- prepared inadequate price reasonableness determinations for five task orders valued at \$110.2 million—specifically, officials did not support that \$26.0 million in proposed direct labor represented a fair and reasonable price; and
- prepared inadequate technical evaluations for the 6 task orders valued at \$120.8 million.

These conditions occurred because contracting officials made decisions without adequately documenting the award process and program officials did not properly complete technical evaluations. As a result, AFCEE contracting officials put the Government at risk for contractor overcharges and labor inefficiencies and could not be sure that the labor prices were fair and reasonable.

Justification for Using T&M Task Orders

T&M type contracts and task orders are more risky for the Government because, as stated in FAR 16.601(b)(1), “Government Surveillance,” a T&M contract “provides no positive profit incentive to the contractor for cost control or labor efficiency.” Because of this risk, FAR 16.601(c), “Limitations,” states, “A time-and-materials contract may be used (1) only after the contracting officer executes a determination and findings that no other contract type is suitable.”

Of the six task orders reviewed, one task order with a value of \$18.3 million did not contain a determination and findings (D&F) for awarding a T&M task order.

Of the five task orders that had D&Fs for awarding a T&M task order, one of the task orders with a value of \$24.0 million had an inadequate D&F. This D&F was inadequate because it outlined in general terms why a T&M type task order must be used. As stated in the current version of DFARS 216.601(d)(i), “The determination and findings shall contain sufficient facts and rationale to justify that no other contract type is suitable. At a minimum, the determination and findings shall . . . Establish that it is not possible at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty . . .” Although the

D&F stated, “It is not possible at the time of placing the task order to estimate accurately the extent or duration of the unscheduled work or to anticipate the cost with any reasonable degree of confidence . . .” the contracting officer did not specify why the extent and duration of the work could not be estimated because AFCEE contracting officials did not prepare adequate documentation in accordance with FAR 16.601(d) and DFARS 216.601(d), “Limitations.” As a result, by using a T&M contract, contracting officials may have put the Government at risk for overcharges and inefficiency by the contractor, because, as stated in FAR 16.601(b)(1), there is no incentive for the contractor to perform efficiently.

Source Selection Documents

Contracting officials did not prepare a source selection document for one task order reviewed and prepared an inadequate source selection document for three of the six task orders reviewed. FAR 4.801(b), “General,” states, “The documentation in the files (see 4.803) shall be sufficient to constitute a complete history of the transaction for the purpose of . . .” In addition, FAR 4.802(a), “Contract Files,” states that a contract file should generally consist of the contracting office contract file that documents the basis for the acquisition and the award. Finally, FAR 4.803, “Contents of contract files,” states that the Government contract file should contain source selection documentation.

AFCEE contracting officials did not prepare a source selection document for task order 0055 with a value of \$18.3 million because the contracting officials did not comply with the FAR requirements for maintaining a complete history of the transaction. As a result, the rationale for selecting the awardee cannot be reviewed to determine whether the choice was appropriate.

In addition, contracting officials prepared inadequate source selection documents for three of the six task orders—task orders 0063, 0067, and 0104 with a value of \$78.5 million—because the contracting officials did not comply with the FAR requirements for maintaining a complete history of the transaction. As a result, the documentation did not provide a clear analysis showing why the awardee was most qualified.

For example, the source selection document for task order 0067 stated the six criteria that were used in making the source selection. The document also stated that the selection criteria were reviewed and discussed as they related to each potential contractor. However, contracting officials did not document the review or any of the discussions of each potential contractor. There is no additional information on the source selection document to indicate why the contractor, Versar Inc., was chosen at all. Source selection documents should clearly document the contracting officials’ analysis so that a third party can easily review that document and arrive at the same conclusion. AFCEE management should emphasize the importance of auditability of contract and task order documentation.

Price Reasonableness

Typically, multiple-award contracts provide the Government with the ability to obtain a reasonable price through competition. Without competition, contracting officials must use more stringent analysis to determine if prices are fair and reasonable. As previously stated, AFCEE awarded the six task orders using the procedures outlined in FAR 36, which does not require full and open competition. Therefore, AFCEE needed to conduct a more in-depth analysis to show that the proposed prices were fair and reasonable. FAR 15.404-1(a)(1) states, “The contracting officer is responsible for evaluating the reasonableness of the offered prices.” Although the general and administrative and material handling expenses and labor rates for each task order were reviewed and approved by the Defense Contract Audit Agency, the contracting officer still has to evaluate the proposed direct labor in order to make a price reasonableness determination.

The five task orders for title II services, with a value of \$110.2 million, had inadequate price reasonableness determinations. Specifically, these determinations did not adequately support \$26.0 million in proposed direct labor (63.0 percent of total proposed direct labor). The Price Negotiation Memorandums (PNMs) for task orders 0055, 0063, 0067, 0083, and 0032 stated that the labor rates were fair and reasonable based on a comparison to previous task orders and the base contract. The task orders awarded previous to task order 0055 were task orders 0030 and 0044. However, the contracting official could not locate the task order file for task order 0044.

Generally, the analysis in the PNMs for other cost categories, including other direct costs, travel, equipment, subcontractor, and security was adequate. However, the direct labor analysis had numerous discrepancies that contracting officials did not address in the PNMs. We compared the labor categories and rates proposed to the previously awarded task orders and the base contract, as described in the PNMs for each task order. Table 3 shows a summary of the labor that lacked support for assertion in the PNMs that the labor rates were fair and reasonable.

Table 3. Proposed Direct Labor That is Not Supported as Fair and Reasonable

Task Order	Labor Categories		Unsupported Direct Labor	Total Proposed Direct Labor	Percent of Unsupported Proposed Direct Labor
	Unsupported	Total			
0055	11	20	\$3,161,190	\$6,722,602	47.0
0063	14	19	2,162,104	3,484,292	62.1
0067	17	23	12,709,449	14,408,392	88.2
0083	15	19	3,137,339	4,588,474	68.4
0032	9	20	4,845,805	12,060,104	40.2
Total	66	101	\$26,015,887	\$41,263,864	63.0%

Task Order 0055

The contractor proposed a total of 20 labor categories for task order 0055. AFCEE contracting officials added direct labor on the basic task order and modifications 1, 2, and 6 and prepared PNMs for each. These PNMs stated that the direct labor rates were fair and reasonable based on comparisons to the contractor's negotiated rates on the overall base contract and based on comparisons to previous work performed in Iraq. However, upon performing this comparison, we found that the contracting officials had not included 11 of the 20 labor categories in either the base contract or in previously awarded task orders for work in Iraq and Afghanistan. Therefore, the contracting official's assertion in the PNM that these rates were fair and reasonable is unsupported and, as a result, the Government had no assurance that the rates for these 11 labor categories were fair and reasonable. The contractor proposed a total of \$3.2 million for these 11 labor categories, which represented 47.0 percent of the total amount proposed for direct labor.

Task Order 0063

The contractor proposed a total of 19 labor categories for task order 0063. AFCEE contracting officials added direct labor on the basic task order and modifications 1 and 2, and prepared PNMs for each. These PNMs stated that the direct labor rates were fair and reasonable based on:

- comparisons to the contractor's negotiated rates on the overall base contract,
- comparisons to previous task orders, and
- the determination that the danger pay allowance¹ included in the uplift² proposed for OCONUS work was appropriate.

However, upon performing this comparison, we found that the contracting officials had not included 14 of the 19 labor categories in the base contract or in previously awarded task orders for work in Iraq and Afghanistan. Therefore, the contracting official's assertion in the PNM that these rates were fair and reasonable is unsupported and, as a result, the Government had no assurance that the rates for these 14 labor categories were fair and reasonable. The contractor proposed a total of \$2.2 million for these 14 labor categories, which represented 62.1 percent of the total amount proposed for direct labor.

Task Order 0067

The contractor proposed a total of 23 labor categories for task order 0067. AFCEE contracting officials added direct labor on the basic task order and modification 2 and

¹ The U.S. State Department defines danger pay allowance as the “the additional compensation of up to 35 percent over basic compensation granted to employees . . . for service at designated danger pay posts.”

² Uplift is a rate that consists of a danger pay allowance and a post hardship differential. The uplift increases the labor rate for labor performed in dangerous areas where the standard of living is not equivalent to the United States. The State Department defines a post hardship differential as the “additional compensation of 5, 10, 15, 20, 25, 30 or 35 percent over basic compensation for service at places in foreign areas where the conditions of environment differ substantially from conditions of environment in the United States.”

prepared PNMs for each. These PNMs stated that the direct labor rates were fair and reasonable based on:

- comparisons to the contractor's negotiated rates on the overall base contract,
- comparisons to previous task orders, and
- the U.S. State Department guidelines allowing for up to a 70.0 percent uplift for work performed in Iraq.

However, upon performing this comparison, we found that the contracting officials had not included 17 of the 23 labor categories in the base contract or in previously awarded task orders for work in Iraq and Afghanistan. Therefore, the contracting official's assertion in the PNM that these rates were fair and reasonable is unsupported and, as a result, the Government had no assurance that the rates for these 17 labor categories were fair and reasonable. The contractor proposed a total of \$12.7 million for these 17 labor categories, which represented 88.2 percent of the total amount proposed for direct labor.

In addition, the PNM for modification 2 stated that the rates for the third-country and local nationals were fair and reasonable because they were significantly less than the rates for Americans to perform the same work. The rates should be determined as fair and reasonable based on the market rates and skill level for similar work in Iraq.

Task Order 0083

The contractor proposed a total of 19 labor categories for task order 0083. AFCEE contracting officials included direct labor on the basic task order and prepared a PNM. The PNM stated that the direct labor rates were fair and reasonable based on comparisons to the contractor's negotiated rates on the overall base contract and based on the uplift rate being lower than the U.S. State Department danger pay allowance. However, upon performing this comparison, we found that contracting officials had not included 15 of the 19 labor categories in the base contract. Therefore, the contracting official's assertion in the PNM that these rates were fair and reasonable is unsupported and, as a result, the Government had no assurance that the rates for these 15 labor categories were fair and reasonable. The contractor proposed a total of \$3.1 million for these 15 labor categories, which represented 68.4 percent of the total amount proposed for direct labor.

Task Order 0032

This task order was broken into two sections, a firm-fixed-price section and a T&M section. The contractor proposed a total of 23 firm-fixed-price labor categories and 20 T&M labor categories. AFCEE contracting officials included direct labor on the basic task order and prepared a PNM. The PNM stated that the direct labor rates were fair and reasonable based on comparisons to the base contract and based on the determination that the uplift rate for OCONUS work was appropriate.

However, upon performing this comparison, we found that 9 of the 20 T&M labor categories were not included in the base contract. Therefore, the contracting official's assertion in the PNM that the rates were fair and reasonable is unsupported and as a result, the government has no assurance that the rates for these 9 labor categories were

fair and reasonable. The contractor proposed a total of \$4.8 million for these 9 labor categories, which represented 40.2 percent of the total amount proposed for direct labor.

Because the government cannot accurately estimate the extent or duration of the work when using a T&M contract, it is very important that contracting officials perform a thorough analysis of all labor rates before work begins. AFCEE contracting officials need to analyze all labor categories prior to determining an order is fair and reasonable.

Technical Evaluations

The technical evaluations of the labor hours and labor mix for all six task orders valued at \$120.8 million were inadequate. The FAR provides guidance on conducting technical evaluations. FAR 15.404-1(e)(2), “Technical Analysis,” states, “At a minimum, the technical analysis should examine the types and quantities of material proposed and the need for the types and quantities of labor hours and the labor mix.”

The technical evaluations for each of these six task orders stated that the labor hours and labor mix were appropriate for the work to be performed. The evaluations did not contain sufficient detail or analysis to show that this determination was reasonable. The technical evaluations should have specified which contracts or task orders the hours and labor mix were compared to or what analysis was done to determine the appropriateness of the labor hours and mix.

The contracting officer was aware of the inadequacy of the technical evaluations and had attempted to address the issue with the evaluator several times, but could not get the evaluator to prepare the technical evaluation correctly.

The pricing on a T&M contract or task order is directly related to the number of hours worked for each particular labor category. Therefore, an inadequate technical evaluation means that the Government has no assurance that the overall price for direct labor is fair and reasonable. AFCEE needs to ensure that contracting and program officials document their analysis so that a third party can easily review that document and determine how the conclusion was reached. In addition, the analysis and accompanying documentation should be able to stand alone. Contract and task order documentation should be auditable.

Summary

The contracting officers and program personnel should have ensured that the task order file contained a complete history of the transaction, including a documented and thorough analysis to support a proper audit trail. A thorough and well-documented analysis would ensure that source selection decisions were clear, the government paid a fair and reasonable price, and the labor hour and labor mix were appropriate.

Management Comments on the Finding and Our Response

Department of the Air Force Comments

The Deputy Director, Air Force Center for Engineering and the Environment, partially agreed with this finding. The Deputy Director has taken “appropriate measures” to ensure that the Air Force adequately documents justifications for using time-and-materials contracts, source selection, and price reasonableness. The Deputy Director disagreed that the source selection memoranda for three of the task orders valued at \$78.5 million were inadequate. Also, the Deputy Director disagreed that contracting personnel prepared the technical evaluations and stated that contracting officer’s representatives prepared the technical evaluations. However, the Deputy Director agreed to put measures in place to ensure that contracting personnel properly reviewed technical evaluations.

Our Response

We disagree that the source selection memoranda for the three task orders valued at \$78.5 million were adequate. These memoranda did not provide a detailed account of the contracting official’s analysis, which is necessary for auditability. A third party should be able to easily review a source selection memorandum and arrive at the same conclusion that the awardee was the most qualified. In addition, we disagree with the Air Force’s assertion that contracting officer’s representatives are not contracting personnel.

Recommendations, Management Comments, and Our Response

Deleted Finding and Renumbered Recommendations

As a result of management comments, we deleted draft Finding B and the corresponding recommendation. Recommendation C has been renumbered to Recommendation B.

B. We recommend that the Director, Air Force Center for Engineering and the Environment, hold contracting and program officials accountable by developing effective internal controls for adequately documenting and describing their analysis when determining price reasonableness, conducting technical evaluations, and justifying the use of a time-and-materials contract or task order. This documentation and analysis should be auditable, and all necessary attachments and references should be clearly evident.

Department of the Air Force Comments

The Deputy Director, Air Force Center for Engineering and the Environment, agreed and corrective actions have been taken to ensure adequate justifications, source selection documents, and price reasonableness determinations are prepared for task orders.

Our Response

The Air Force comments are responsive. No further comments are required.

Appendix A. Scope and Methodology

We conducted this performance audit from December 2008 through May 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As mentioned in the Background section of this report, this is the second report addressing T&M contracts for work performed in Southwest Asia. Originally, we intended to write one report. However, when determining which contracts and task orders to review, we identified only one Air Force site and several Army sites. In addition, during our Air Force site visit, we determined that contracting officials awarded those task orders for AE services, which have different award procedures than other types of contracts and task orders. Army contracting officials did not use AE award procedures for the contracts and task orders we reviewed. To make these distinctions clear, we separated the Air Force and Army findings into two audit projects.

For these two projects, we reviewed the award procedures and administration of 24 contracts or task orders and interviewed contracting and program personnel involved in the process. Each task order or contract had documentation related to the pre-award process and administration that had to be analyzed. To comply with the audit objectives, we had to, in some instances, review prior contracts or task orders not part of the scope because the contract action we audited referred to previous contract or task order. In addition, as part of this audit, we analyzed hundreds of invoices. This analysis included comparing each labor category and rate to the categories and rates approved in the task order. In addition, we interviewed DoD personnel assigned oversight duties. For most of the orders, this required contacting multiple people assigned to oversight responsibilities in-theater because those personnel were there for 3 to 4 month increments and then rotated out with new personnel replacing them. We expended time tracking these rotating personnel to their current assignment.

Overall Audit Scope

We used two database systems to identify the scope for the audit—the Federal Procurement Data System and the Electronic Document Access System. The Federal Procurement Data System is used to collect data about Government procurements. The DOD IG Data Mining Division input data from the Federal Procurement Data System into a database, which the audit team used to run queries. The queries identified contract actions awarded in FY 2007 and FY 2008 that were T&M with work performed in Iraq or Afghanistan. We used the information gathered from the Federal Procurement Data System to search the Electronic Document Access system. The Electronic Document Access system is an online document access system designed to provide acquisition related information for use by all of DOD. The Electronic Document Access system provides copies of the actual contract or task order so we used the system to identify the

original and current value of the contracts and task orders we had identified through our queries of the Federal Procurement Data System.

Using the Federal Procurement Data System, we identified 258 contract actions issued in FY 2007 and 2008 with a total obligated amount of \$658.5 million. These 258 contract actions consisted of contracts, task orders, and modifications. The 258 contract actions represented 58 contracts or task orders.

We eliminated all contract actions related to contract F34601-97-D-0425 because of a separate, ongoing audit. The DOD IG issued DOD IG Report No. D-2010-047, “Repair and Maintenance Contracts for Aircraft Supporting Coalition Forces in Afghanistan, Iraq, and Kuwait,” discussing that contract on March 26, 2010. Excluding those contract actions, 166 contract actions remained related to 51 contracts or task orders with a total obligated amount of \$202.1 million. We used the Electronic Document Access system to identify the amount of those contracts and task orders at the end of CY 2008. At the end of CY 2008, the 51 contracts or task orders had a value of \$976.6 million.

We selected contracts and task orders that had a product or service code that was in the “Support Services – Professional, Administrative & Management” category or with values of at least \$10 million to review. These criteria reduced our scope to 26 contracts or task orders with a value of \$929 million, which is 95.1 percent of the value of the 51 contracts or task orders previously identified.

Of the 26 contract actions with a value of \$929 million, we judgmentally selected to review 14 contracts or task orders with a value of \$254.7 million. We chose these contracts and task orders based on the type of work being performed, the number of contracts and task orders at that site, and the location of the site. We added an additional contract to review at one of the sites. Therefore, we selected 15 contracts or task orders with a total value of \$261.2 million awarded by four contracting offices to review.

AFCEE Scope

Of the 15 contracts and task orders we initially identified, AFCEE awarded 4 task orders with a value of \$91.2 million. During our site visit, we identified two additional task orders to review. Therefore, at AFCEE we reviewed a total of six task orders with a value of \$120.8 million. Five of the task orders reviewed were for title II services and the remaining task order was for other AE services.

We interviewed only three CORs for the five title II task orders reviewed. Two CORs were permanently located in the United States. The remaining COR was in Iraq a few months before we interviewed him. During that time, his primary duties were focused on construction surveillance. Our determinations related to the sufficiency of contract oversight in-country were the result of interviews with these two CORs and the contracting officer.

AFCEE Methodology

We conducted a site visit at AFCEE’s contracting office to review contract documentation and interview contracting and program officials responsible for contract award and administration. We conducted follow-up communication through telephone and e-mails.

We reviewed the six task order files to determine whether DOD:

- contracting officials adequately justified the use of a T&M type contract with a D&F in accordance with FAR 16.601(c),
- contracting officials complied with competition requirements,
- contracting officials paid fair and reasonable prices for products and services, and
- program officials prepared QASPs and conducted sufficient contract oversight to ensure that contractors efficiently and effectively completed their requirements and prepared accurate invoices.

Use of Computer-Processed Data

We used computer-processed data from two databases to identify contracts and task orders to review—the Federal Procurement Data System and the Electronic Document Access System. We ran queries using both of these systems.

We did not assess the reliability of computer processed data because the data were used only to identify which task orders to review. Once we identified the orders that matched our criteria, we used only the documentation contained in the contract files to support our findings, conclusions, and recommendations.

Appendix B. Prior Coverage

During the last 5 years, the Government Accountability Office (GAO), DOD IG, Army Audit Agency, and Air Force Audit Agency have issued 19 reports discussing T&M contracts, Southwest Asia, and government oversight issues. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted DOD IG reports can be accessed at <http://www.DODig.mil/audit/reports>.

Unrestricted Army reports can be accessed from .mil and gao.gov domains over the Internet at <https://www.aaa.army.mil/>.

Naval Audit Service reports are not available over the Internet.

Air Force Audit Agency reports can be accessed from .mil domains over the Internet at <https://afkm.wpafb.af.mil/ASPs/CoP/OpenCoP.asp?Filter=OO-AD-01-41> by those with Common Access Cards.

GAO

GAO Report No. 09-579, “Contract Management: Minimal Compliance with New Safeguards for Time-and-Materials Contracts for Commercial Services and Safeguards Have Not Been Applied to GSA Schedules Program,” June 24, 2009

GAO Report No. 09-643T, “Defense Acquisitions: Actions Needed to Ensure Value for Service Contracts,” April 23, 2009

GAO Report No. 08-269, “Defense Contracting: Contract Risk a Key Factor in Assessing Excessive Pass-Through Charges,” January 25, 2008

GAO Report No. 07-273, “Defense Contracting: Improved Insight and Controls Needed Over DOD’s Time and Materials Contracts,” June 29, 2007

GAO Report No.06-838R, “Contract Management: DOD Vulnerabilities to Contracting Fraud, Waste, and Abuse,” July 7, 2006

GAO Report No. 05-274, “Contract Management: Opportunities to Improve Surveillance on Department of Defense Service Contracts,” March 17, 2005

DOD IG

DOD IG, Report No. D-2010-047, “Repair and Maintenance Contracts for Aircraft Supporting Coalition Forces in Afghanistan, Iraq, and Kuwait,” March 26, 2010

DOD IG Report No. D-2009-109, “Contracts Supporting the DOD Counter Narcoterrorism Technology Program Office,” September 25, 2009

DOD IG Report No. D-2009-096, “Contracts for the U.S. Army’s Heavy-Lift VI Program in Kuwait,” July 28, 2009

DOD IG Report No. D-2009-007, “Procurement and Use of Nontactical Vehicles at Bagram Air Field, Afghanistan,” October 31, 2008

DOD IG Report No. D-2008-097, “Hurricane Relief Effort Costs on the Navy Construction Capabilities Contract,” May 23, 2008

DOD IG Report No. D-2007-036, “Contracting Practices at the Major Range and Test Facilities Base,” December 27, 2006

DOD IG Report No. D-2006-061, “Source Selection Procedures for the Navy Construction Capabilities Contract,” March 3, 2006

DOD IG Report No. D-2006-010, “Contract Surveillance for Service Contracts,” October 28, 2005

DOD IG Report No. D-2006-007, “Contracts Awarded to Assist the Global War on Terrorism by the U.S. Army Corps of Engineers,” October 14, 2005

Army

Army Report No. A-2006-0091-ALL, “Audit of Management of the Theater Transportation Mission (Task Order 88), Audit of Logistics Civil Augmentation Program Operations in Support of Operation Iraqi Freedom,” April 4, 2006

Army Report No. A-2006-0083-ALL, “Audit of Retrograde Operations (Task Order 87), Audit of Logistics Civil Augmentation Program Operations in Support of Operation Iraqi Freedom,” March 21, 2006

Air Force

Air Force Report No. F2008-0004-FC1000, “Competition in Multiple-Award Service Contracts,” April 3, 2008

Air Force Report No. F2008-0001-FC1000, “Management and Oversight of the Acquisition of Services Process,” October 1, 2007

Air Force Center for Engineering and the Environment

Comments



DEPARTMENT OF THE AIR FORCE
AIR FORCE CENTER FOR ENGINEERING AND THE ENVIRONMENT
LACKLAND AIR FORCE BASE TEXAS

15 JUN 2010

MEMORANDUM FOR DODIG

FROM: AFCEE/DC
2261 Hughes Ave, Ste. 155
Lackland AFB TX 78236-1845

SUBJECT: Management Comments for DoD IG Draft Report of Audit, Time and Materials
Contracts in Southwest Asia

We non-concur with the audit results regarding the review and use of Time and Materials contract in Southwest Asia, and concur with comments on some of the recommendations. The specific management comments are attached.

AFCEE believes the draft report will materially and substantially change. Based on the anticipation of substantive changes, we request a revised draft report be sent to us. We will then provide our formal review comments within 30 days from when the revised report is received.

If you have any questions or concerns with our comments, please contact [REDACTED]
[REDACTED]

A handwritten signature in black ink, appearing to read "Edward G. Noack".

EDWARD G. NOACK, YC-03, DAF
Civilian Deputy Director

Attachment:
Management Comments

DoD IG Audit
Report of Audit, Use of Time and Materials Contracts
(Project D2009-D000CF-0095.001)
AFCEE Management Comments

Finding A, Contract Oversight:

Audit Result 1, AFCEE contracting and program officials did not perform adequate contract oversight for AE work performed on the six task orders we reviewed valued at \$120.8 million.

While AFCEE concurs with some recommendations, we do not agree in all cases, with the statement of conditions leading to the recommendations. The management comments below further amplify the condition statement analysis.

AFCEE personnel did not monitor the contractors hired to perform the oversight function for construction work in Iraq and Afghanistan for five task orders valued at \$110.2 million.

Non-Concur. CX and ACQ dispute this characterization. It is AFCEE's view construction CORs oversaw Title II activity. It appears a substantial oversight occurred and the construction CORs were not properly designated Title II CORs. AFCEE is correcting this administrative oversight by providing the needed appointment.

AFCEE personnel did not adequately review invoices for five task orders valued at \$98.6 million:

Concur. AFCEE previously identified a weakness in the legacy process used to review contractor invoices and in Feb 2007 put into place an Invoice Review Team and formal process to review each and every invoice. This new formal invoice review process ensures invoices submitted after Feb 2007 meet requirements for adequacy and compliance. AFCEE acknowledges that we failed to take retroactive actions to review older invoices submitted prior to inception of the current formal invoice review process.

AFCEE personnel did not prepare quality assurance surveillance plans (QASPs) for the six task orders:

Non-Concur. FAR §46.401 calls for Quality Assurance Surveillance Plans for both services and supplies. FAR §37.101 includes A-E contracting within the application of Part 37. Immediately thereafter, however, FAR §37.102 (a)(1)(i) specifically states that A-E services acquired under Part 36 are outside the application of the policy that Performance Based Acquisition (PBA) should be used when buying services. It is Subpart 37.6, *Performance Based Acquisition*, which mandates Quality Assurance Surveillance Plans. Strictly speaking then, the QASP of Subpart 37.6 is not required.

Audit Result 1 - Recommendations: The AFCEE Commander should:

Audit Result 1 - Recommendation A.1. Establish a written plan to review the invoices for the six time-and-materials task orders; request the Defense Contract Audit Agency's assistance in reviewing invoices for allowable, allocable, and reasonable costs; obtain reimbursements for incorrect charges; and report the amounts reimbursed on a periodic basis to the appropriate officials at the Air Force Center for Engineering and the Environment and the DOD Inspector General. The plan should require special attention to the \$24.5 million of charges for labor charges invoiced by the contractors but not authorized by the task orders.

Non-Concur. A surveillance plan exists for each Task Order reviewed and is located in each file. Also, an Invoice Review Team is in place which reviews invoices before submission to DFAS for payment.

Audit Result 1 - Recommendation A.2. Assign contracting officer's representatives or other Government officials to develop quality assurance surveillance plans and conduct and document appropriate surveillance over the title II contractors to ensure that work performed on a time-and-materials basis is being performed in accordance with the task order requirements and is invoiced correctly.

Non-Concur. It is AFCEE's view construction CORs oversaw Title II activity. It appears a substantial oversight occurred and the construction CORs were not properly designated Title II CORs. AFCEE is correcting this administrative oversight by providing the needed appointments.

Audit Result 1 - Recommendation A.3. Conduct a legal review of the statements of work for the title II task orders to determine whether the work performed was an inherently governmental function.

Concur. Verbatim language from the AFCEE/JA legal review is included below.

Our Legal Division reviewed the six SOWs in light of the proposed inherently governmental activity rule of OFPP which follows the FAIR Act. (75 FR 16188). It is the opinion of our Legal Division that:

Task Order 8620-0055, 4P AE03, awarded 28 Mar 06.

a. The essential Title II function is common to all of the task orders. It is noted that "Provision of inspection services" is on the list entitled, "Functions Closely Associated with the Performance of Inherently Governmental Functions", Appendix B of the proposed rule, rather than the list in Appendix A, "Examples of Inherently Governmental Functions." This placement is instructive, as it underlines that inspection is an important function, but does not equate to the performance of an inherently governmental function. There are several recommendations for the conduct of such a contract in the rule. Here are how a few of those recommendations align with the SOWs:

i. The draft rule suggests the USG limit or guide a contractor's exercise of discretion and retain control of government operations. In the case of the Title II task orders, the contractor was directed in the SOWs to enforce the International Building Code as well as other guides, such as the Sand Book. The contractor was not at liberty to waive these or establish its own standard. Further, the pre-final inspection of the completed project required the presence of the CO or their designee. At this critical juncture of the A-E oversight effort, the contractor's discretion was checked by the presence of the CO. This leads to the conclusion that the presence of the contractor did not function to present a predetermined decision to the CO on final consideration of the overseen construction project.

ii. While the proposed rule recommends that functions closely associated be administered by a set of qualified government employees (*See* 5-2a (c)), it provides no formula for such surveillance. In the case of AFCEE's Title II in Iraq and Afghanistan, qualified government employees did conduct surveillance of the Title II effort. While it may not have been at the frequency of the observation of a contract in CONUS, it also cannot be dismissed.

b. AFCEE noted that the TO also observes that the Title II contractor may also be appointed the "Base Engineer" in some locations as needed. The same oversight by the USG as above would necessarily be in place plus the constraint of being unable to obtain anything of a contractual nature on its own that would bind the USG. A uniformed service member serving as a base engineer may not obligate funds in the Air Force, so no inherently governmental role is presented here either.

Task Order 8620-0063, 4PAE03, awarded 17 Oct 06.

c. This task order differed from 0055 generally only in location. This one called for the contractor to oversee construction in Afghanistan rather than Iraq. This is well represented by the description in para 2.2 where it states that the contractor shall, "... perform and submit to AFCEE detailed audits of construction performed by contractors prior to final project close-out." Again, the Title II contractor is put in the position of an inspector, not a final arbiter of the USG's acceptance of the contract.

d. By the same token, para 2.2 also calls on the Title II to be present for "...routine meetings between the onsite government representatives and the construction contractors where construction management and quality are topics of discussion." The contractor is called on to be present, not to conduct the acceptance of the work.

Task Order 8620-0067, 4PAE03, awarded 5 Apr 07, for work in Iraq.

e. This task order added the following possible duties: "Title II personnel may, upon consultation with the AFCEE COR, be asked to perform special engineering studies and assessments of current or pending construction projects. The contractor will ensure long-term AFCEE Iraq program continuity by placement of a construction engineer to serve as a Title II liaison to MNSTC-I J-7 staff."

i. The call on the Title II to conduct "special engineering studies" is surely very unremarkable for an A-E order. Notably it is wholly devoid of calling on the contractor to exercise Governmental decision powers.

ii. The direction to furnish a “Title II liaison” also presents no fundamental function of Government to be performed by the contractor. The language presented calls only for continuity, not for decision making power to reside in the contractor. That this would be a requirement of the contract is reasonable, given that the task order called for up to 175 Iraqi engineers to serve in the Title II role on individual projects. Coordinating this site-by-site inspection effort with the requiring activity is a matter of contract management, not decision making.

Task Order 0083, 4PAE03, 8 Feb 08, Afghanistan

f. The oversight of a contractor can be indicative of the degree to which it is being allowed or tasked to perform governmental functions. Note can be taken of the reporting requirements emplaced on the Title II contractor in this TO: “Because of the number of small projects and the required transportation and security costs, only weekly reports will be necessary on renovation projects at this time. Site visits will occur at a minimum of three times per week for Afghan National Police projects, while Afghan National Army projects will require daily oversight. Also, pre-final and final inspection letters, and construction closeout forms will be provided. The Contractor shall perform and submit to AFCEE detailed audits of construction performed by contractors at intervals of 25, 50, 75 percent project completion and prior to final project close-out. The contractor shall also perform submittal reviews of all contractor submittals. Such reviews may require an on-site visual review or off-site comprehensive reviews depending on their nature (material acceptance versus load calculations).” What this reflects is a graduated oversight, adjusted to the nature of the work being overseen. The key point is that the Title II engineers are not being appointed to decision making roles, but observation and reporting. Ultimate decisions remained with the USG.

Task Order 8606-104, awarded 16 Mar 06, Master Planning in Afghanistan

g. This TO required in pertinent part the following performance:

“The Contractor shall provide advanced planning services such as installation and facility programming and planning of facilities of interest to the government and prepare Master Plans and Cost Estimates for the prioritized projects listed in Section 1 of this SOW. Services and studies may include, but are not limited to sub-area development plans. Development plans shall include rough cost estimates required for execution, and may include feasibility studies as directed for alternative program recommendations, and economic studies associated with programs recommended by the AF. In addition, complete renderings, technical field investigation and survey requirements, field reconnaissance and surveying, and engineering information and design data and other project specific work as required. Other professional services not necessarily connected with a specific construction project may also be required.

h. Other than the last sentence, the task order called for the development of Master Plans at a set of designated bases. No indication of final decision making or foreclosure of meaningful options is implied by this list. As to the last sentence, it is difficult to see the direction of the A-E firm to serve as a substitute for Governmental authorities in its content.

Task Order 32, 4PAE08, Title II in Iraq. The audit found this task order was awarded properly.

Finding B, Task Order Award

We reviewed six task orders valued at \$120.8 million that AFCEE contracting officials awarded using the 4PAE03 and 4PAE08 multiple-award contracts. AFCEE contracting officials did not provide fair opportunity to all qualified contractors when awarding five task orders valued at \$110.2 million because they awarded the task orders using FAR Part 36 procedures instead of FAR Part 16 procedures. The contracting officials used the FAR Part 36 procedures because they were treating the requirement as if registered and licensed engineers were required. As a result, AFCEE contracting officials limited competition by not providing all multiple-award contractors with a fair opportunity to be considered for award.

Deleted Pages
12-16, Finding B

Non-Concur. It is our view that this finding reflects a reading of FAR Subpart 36.6 which is improper and too narrow. Our analysis follows.

- a. First, the above view does not take into account the broad definition of what is “architect – engineer services” (hereafter “A-E services”). Notably, as the audit cites, FAR 36.601-4 (a) directs that “Contracting officers should consider the following services to be “architect – engineer services” subject to the procedures of this subpart: ... (3) Other professional services of an architectural or engineering nature or services incidental thereto (including studies... construction phase services, ...) that logically and justifiably require performance by registered architects or engineers or their employees.” From this definition of what constitutes A-E services, it is clear that the drafters of this definition considered construction phase services, such as Title II, to be a clear instance of what is logically and justifiably the work of an A-E professional. The definition does not, however, isolate such work to licensed A-E professionals as the audit implies. Instead, the employees of registered A-E are specifically included. Within the definition of A-E services, then, is construction phase services performed by the employees of registered architects and engineers.
- b. Second, the audit gives AFCEE none of the discretion the GAO has recognized as pertaining to the choice of placing work on an A-E contract. In discussing a Forest Service decision to place certain work on a non-A-E contract, the GAO stated, “...the determination of Brooks Act applicability should be made initially on a case-by-case basis by the contracting officer in accordance with the definition provided in the 1988 amendment and the FAR, since, as indicated in the conference report, this initial decision is within the discretion of the contracting agency. See H.R. Rep No. 100-1079 at 89. We will review such determinations where it is alleged that the contracting officer has abused their discretion or made the determination in bad faith.” *Matter of: Forest Service Request for Advanced Decision*, 68 Comp. Gen. 555, B-233987, B-233987.2, 89-2 CPFD P 47, 1989 WL 237508 (Comp. Gen.) 1989. Thus the GAO decided that agencies should find first whether the work contemplated is incidental to A-E effort and then make an appropriate placement. It did not hold that the work had to be exclusively performed by licensed A-E professionals as the audit concludes.

- c. Third, the single line excerpted from the SOW does not give an accurate impression of what was actually purchased on the contract. On the six TOs in question, and across the entire effort in Iraq and Afghanistan, the AFCEE Title II contractor hired third country national (TCN) engineers to serve on site, overseeing local national (LN) engineers. In turn, the TCN and LN engineers at the construction site were overseen by licensed and registered U.S. engineers, sometimes located in the U.S., and at times in-country. It is AFCEE's conclusion the purchase of A-E effort is not confined to U.S. licensed A-E professionals. The statements of work may not have been ideally worded. In the future, AFCEE will word the SOW sentence in question as follows, "For the purpose of continuous on-site Title II effort, the A-E firm need not provide architects and engineers holding U.S. licenses, but will provide engineers holding credentials in the host nation as well as engineers holding credentials in third countries, as appropriate."
- d. The audit observes that lacking the demand for licensed A-E professionals, the contracting officer should have submitted the work to all contract holders on the 4PAE03 or 4PAE08 contract and thus gain price competition. This is not legally possible. Both contracts were awarded using Part 36 procedures. To then use FAR §16.505 as though a purchase were being made pursuant to the requirements of Part 37, a simple services buy, would violate the basic Part 36 contract. Assuming that the services intended to be purchased did not constitute A-E professional services, a point we do not grant, the contracting officer would have needed to avail himself of a different contract, one using Part 37.
- e. In summary, it is AFCEE's view that, first, construction phase services is an A-E service. It is routinely awarded as A-E throughout the Air Force and the broader Dept of Defense (*See, To The Boutwell Company, Inc.*, B- 153704, 1964 WL 2187 (Comp.Gen.):Oct. 13, 1964). Second, an A-E contract may not bring about fair and reasonable price through price competition. Instead, an A-E vehicle may only negotiate price once the most qualified contractor has been selected.

Audit Result 2 - Recommendation B.1. We recommend that the Director, Air Force Center for Engineering and the Environment require that contracting officials compete task orders for services that do not have to be performed by registered or licensed architects and engineers using the fair opportunity procedures outlined in the Federal Acquisition Regulation for multiple-award, indefinite-delivery, indefinite-quantity contracts.

Non-Concur. The audit observes that lacking the demand for licensed A-E professionals, the contracting officer should have submitted the work to all contract holders on the 4PAE03 or 4PAE08 contract and thus gain price competition. This is not legally possible. Both contracts were awarded using Part 36 procedures. To then use FAR §16.505 as though a purchase were being made pursuant to the requirements of Part 37, a simple services buy, would violate the basic Part 36 contract. Assuming that the services intended to be purchased did not constitute A-E professional services, a point we do not grant, the contracting officer would have needed to avail himself of a different contract, one using Part 37. In the future, AFCEE will word the

SOW sentence in question as follows, “For the purpose of continuous on-site Title II effort, the A-E firm need not provide architects and engineers holding U.S. licenses, but will provide engineers holding credentials in the host nation as well as engineers holding credentials in third countries, as appropriate.”

Finding C, Task Order Documentation

Renumbered as
Finding B

Audit Result 3, Task Order Documentation

AFCEE contracting officials did not prepare a justification for the use of a T&M task order for one task order valued at \$18.3 million.

Concur. Appropriate measures have been put into place to ensure proper justification on T&M task orders.

AFCEE contracting officials prepared an inadequate justification for the use of a T&M task order for one task order valued at \$24.0 million

Concur. Appropriate measures have been put into place to ensure proper justification on T&M task orders.

AFCEE contracting officials did not prepare a source selection document for one task order valued at \$18.3 million

Concur. Appropriate measures have been put into place to ensure source selection documents are prepared and placed in the file.

AFCEE contracting officials prepared inadequate source selection documents for three task orders valued at \$78.5 million

Non-Concur. A Source Selection Memorandum was used in the selection of the contractor in accordance with the ordering clause.

AFCEE contracting officials prepared inadequate price reasonableness determinations for five task orders valued at \$110.2 million—specifically, officials did not support that \$26.0 million in proposed direct labor represented a fair and reasonable price

Concur. Labor categories and labor rates for TCN/LNs on these task orders were not incorporated into the labor base until later modifications. Appropriate measures have been put into place to ensure adequate price reasonableness determinations are accomplished.

AFCEE contracting officials prepared inadequate technical evaluations for the orders valued at \$120.8 million

Non-Concur. Technical evaluations are not prepared by contracting personnel but by the Contracting Officer Representatives. However, measures have been put into place to ensure the technical evaluations are properly reviewed by contracting personnel.

Audit Result 3 - Recommendation C.1. We recommend that the Director, Air Force Center for Engineering and the Environment hold contracting and program officials accountable by developing effective internal controls for adequately documenting and describing their analysis when determining price reasonableness, conducting technical evaluations, and when justifying the use of a time-and-materials contract or task order. This documentation and analysis should be auditable, and all necessary attachments and references should be clearly evident.

Concur. Corrective actions have been accomplished where noted under Audit Result 3, Task Order Determination.

Renumbered as
Recommendation B



Inspector General Department of Defense